

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

MAKE THE ROAD NEW YORK and
MAKE THE ROAD CONNECTICUT,

Plaintiffs,

v.

Case No.: 1:18-cv-02445-NGG-JO

U.S. DEPARTMENT OF HOMELAND
SECURITY, OFFICE OF THE
SECRETARY OF HOMELAND
SECURITY, U.S. CITIZENSHIP AND
IMMIGRATION SERVICES, U.S.
DEPARTMENT OF JUSTICE, OFFICE
OF THE ATTORNEY GENERAL,
OFFICE OF THE SOLICITOR
GENERAL, and OFFICE OF LEGAL
COUNSEL,

Defendants.

**PROPOSED PROCESSING SCHEDULE FOR
THE DEPARTMENT OF JUSTICE OFFICE OF INFORMATION POLICY**

Pursuant to the Court’s Memorandum and Order of November 16, 2018, ECF No. 30, Defendant the Department of Justice Office of Information Policy (“OIP”) hereby proposes that it complete processing of Plaintiffs’ FOIA Request¹ no later than April 26, 2019. As support for its proposal, OIP submits the following:

1. On September 22, 2017, Plaintiffs submitted a FOIA request to OIP, which processes FOIA requests on behalf of the Office of the Attorney General (“OAG”), seeking records related to the operation of the Deferred Action for Childhood Arrivals (“DACA”) policy and the decision to rescind

¹ For the purposes of this proposal, “Plaintiffs’ FOIA Request” refers to the request Plaintiffs submitted to OIP on September 22, 2017.

DACA. *See* ECF No. 1-9. Seven months later, on April 25, 2018, Plaintiffs filed the instant action, challenging OIP's, among others, response to Plaintiffs' request. *See* ECF No. 1, ¶¶ 113-118.

2. Six weeks after this case was filed, Plaintiffs submitted a second FOIA Request ("Second Request") to the Department of Justice ("DOJ") seeking records of communications between certain DOJ officials and individuals in the Texas Attorney General's Office. *See* ECF No. 21-15. Less than three weeks later, Plaintiffs amended their complaint to include specific challenges related to the Second Request, but have not challenged the adequacy of OIP's response to that request. *See* ECF No. 21.

3. At the status conference held on November 2, 2018, Defendants alerted the Court that OIP had not yet completed its searches related to Plaintiffs' First FOIA request, in part, because of a technical issue requiring OIP to conduct remediation searches for previously conducted searches affected by the technical issue. *See also*, Second Joint Status Update at 2 (Nov. 30, 2018), ECF No. 32; Letter to the Court (Nov. 9, 2018), ECF No. 34.

4. On November 16, 2018 the Court issued a Memorandum & Order adopting OIP's proposal that "it be allowed to complete its search and update the court with a proposed production schedule by no later than December 21, 2018" so long as OIP conferred with Plaintiffs before proposing a schedule to the Court. Mem. & Ord. at 10, ECF No. 35.

5. OIP received the results of its searches for records related to Plaintiffs' First FOIA Request on December 7, 2019. The searches identified 5,134 potentially responsive items, many of which are multiple pages. Recognizing the Court's interest in resolving this case expeditiously, OIP has determined that it will be able to complete processing of these 5,134 potentially responsive items no later than April 26, 2019, just over 4.5 months after receiving the results of its searches.

6. OIP faces a continued spike of incoming initial FOIA requests and litigation matters and deadlines, with a limited staff to address the influx. *See, e.g.*, Decl. of Vanessa Brinkmann ¶¶ 10-18, *Democracy Forward Found. v. U.S. Dep't of Justice*, No. 1:18-cv-00734-APM, ECF No. 12-1

(D.D.C. June 22, 2018). Therefore, at this time, OIP cannot commit to processing these records on a more expedited basis, but will endeavor to increase the production pace if resources permit.

7. On December 20-21, 2018, counsel for Defendants conferred by e-mail with counsel for Plaintiffs. The Parties were unable to agree on a proposed processing schedule for OIP.

Based on the foregoing, OIP respectfully requests that the Court adopt April 26, 2019 as the deadline for processing Plaintiffs' First FOIA Request.

Dated: December 21, 2018

Respectfully submitted,

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/s/ Rachael L. Westmoreland
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